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No. 06-927

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IN THE

Supreme Court of the United States

LARRY CONWAY and MARILYN CONWAY,

Petitioners,

v.

PRESTON WILSON, Chapter 7 Trustee, and
UNITED STATES Trustee for Region 8, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF

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QUESTION PRESENTED

Whether the alleged actions or inaction of the petitioner excuses the clear violation of law as it relates to conversion of a individual Chapter 11 case to an individual Chapter 7 case involuntarily; failure to comport with the time requirement for creditor's meeting; failure to mandate that the Chapter 7 Trustee make and file reports; continuation of administration of an individual Chapter 7 Bankruptcy Case after the denial of discharge for over three years and the overall stripping of the estate and false reporting of sale assets.

Whether the alleged actions or inaction of the petitioner excuses (1) the grant of power to the Bankruptcy Court and the Bankruptcy Appellate Court in contravention of 11 U.S.C.S. § 157.

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STATEMENT OF THE CASE

Petitioner has set forth the statement of the case in the Petition for Writ of Certiorari.

I INTRODUCTION

The chapter 7 Trustee erroneously presented the essence of the issues presented to this Court by attempting to devalue the importance of the constitutional issues raised by the petitioner. The petitioner has consistently contended that the conversion of the case to a Chapter 7 case constituted an involuntary action by the Court of which they failed and refused to follow the "black letter statutory law." The petitioner asserts that the actions of the Court were in such derogation of his constitutional rights that he had no other alternative but to avail himself of his right to civil disobedience by utilization of the 1st Amendment to the Constitution in asserting his right to due process.

The issues raised by the Chapter 7 Trustee as to the pattern of behavior of the petitioner is simply a legal strategy to sidetrack the Court from the primary issue which centers around the failure of the Bankruptcy Court to follow statutory and constitutional protections, as well as the failure of the Sixth Circuit to carry out their mandate as a Court of Appeals. The respondent has raised the issue of the behavior of the petitioner as the justification for the actions of the Court. Yet there is a pattern of actions carried on by the Bankruptcy Court and ratified by the appellate Court that raises substantial issues of constitutional violations and abuse of power.

Notwithstanding the erroneous characterization, the petitioner contends that the Bankruptcy Court has far exceeded its authority and grasp that any action on the part of the petitioner pales in consideration of the violation of statutory and constitutional law.

II BANKRUPTCY COURT AND CHAPTER 7 TRUSTEE'S PATTERN OF BEHAVIOR

The Chapter 7 Trustee sets forth three (3) categorization of behavior by the petitioner which they contend should defer the Court from consideration of the writ of certiorari. The petitioners contend that the Chapter 7 Trustee has set forth in clear error the facts and the justification of the action of the petitioner. The petitioner hereinbelow sets forth factual and legal responses to the allegation of a pattern of behavior justifying the denial of statutory and constitutional rights.

III DISCUSSION OF PATTERNS

1. Constitutional Violations Mandating 1st Amendment Rights

The petitioners contend that the Bankruptcy Court has acted outside of the purview of its authority and/or the statutory provisions are diametrically oppositional one to the other. In this regard, the petitioner contends that he acted within the scope of his right to be governed by statutory rules and mandates that failed to comport with constitutional protections.

a. By way of example, the petitioner contends that the act of the Bankruptcy Court to convert the case from a Chapter 11 to a Chapter 7 without his

consent and without following the protocol of 11 U.S.C.S. § 303 (b)(1) and requiring a bond pursuant to 11 U.S.C.S. § 303(e) in fact and practice allows for the silent coercive actions of creditors by and through the use of the Trustee's office contemplated by the House and Senate Reports. (Reform Act of 1978).

b. After the Court involuntarily converted the case from an individual Chapter 11 to an individual Chapter 7, without according the petitioner the rights available under 11 U.S.C.S. § 303(b)(1) (number of creditor's required for involuntary petition) and 11 U.S.C.S. § 303(e) (requirement of bond) the petitioner failed to attend the creditor's meeting and/or file schedules because the petitioner did not want or need in individual chapter 7 liquidation.

c. The level of bias activity imposed by the Bankruptcy Court was even noticed by the Chapter 7 Trustee, after he motioned the Court for a dismissal of the action with prejudice for the failure of the petitioner to attend the creditor's meeting pursuant to the Bankruptcy Rule 2003. Yet, currently to present date, almost five years after the involuntary conversion by the Court to an individual chapter 7, and nearly three years after the denial of discharge of any debt, the Court, without justifiable reason based upon definitive facts, prejudicially continued the administration of the estate of the petitioner in what can be said to be only a showing of brute judicial strength and official oppression.

d. The Bankruptcy Court has wholly failed to mandate that the Trustee abide by the duty to keep records and file mandatory required reports pursuant to Rule 2015 of the Rules of Bankruptcy. It should be noted that the Trustee attempts to create a smoke screen regarding the pattern of the petitioner. Yet the Trustee does not address the overall failure of their office to carry out the mandatory requirements of the Bankruptcy Code and Rules. Moreover the Bankruptcy Court allowance of said openly defiance of the rules by Court officers is without justifiable excuse and speaks to the larger broader based issue of bias by the Court. The problem is further compounded by the fact that no checks and balances existed on the appellate level to review said actions in a definitively cognizant manner. It is without argument that the Bankruptcy Code gives broad based power to the Court and U.S. Trustee's office. Notwithstanding the Constitution must and should stand vanguard over these statutory grants of powers when they transcend the levels of equal protection and due process (substantive and procedurally).

e. Finally the Chapter 7 Trustee contends that the petitioners have failed to prosecute their claims and have sought to "have the appellate court fix the problem". . . The petitioners contend that the overall failure of the Bankruptcy Court to adhere to law resulted in a denial of due process of which the appellate division was required to review. The actions of the Bankruptcy Court and its officials

were so blatantly arbitrary and caprious that the petitioner's only recourse was to seek due process from the appellate division.

2. Refusal of Bankruptcy Court and Chapter 7 Trustee to Comply with the Bankruptcy Code

The Trustee assertion that the Petitioners have failed to comply with the Bankruptcy Code is factually unsupported. To the contrary, the petitioners contend that the Trustee and the Court have failed to comport with the letter and spirit of the Bankruptcy law.

The petitioner, Larry Conway, has at all times contended that he was not in support of a conversion to an individual Chapter 7 case without the protections provided for under the Code. The Trustee somehow contends that despite his objection to the conversion to a Chapter 7 (without regard to law) that he must somehow submit his person to the jurisdiction of the Court which has abdicated its judicial duty.

The Trustee makes the argument that Mr. Conway's recalcitrance has resulted in the actions by the Court; yet the Trustee makes no response to the assertion that Mrs. Conway has been treated the same despite having filed a separate individual case in a separate court.

Overall, the argument of the Trustee that the Petitioners have failed to comply with the Bankruptcy Code must fail in light of the (1) overall failure of the Court officials to carry out the statutory mandate and (2) the bias actions imposed upon the petitioner(s) by the Trustee's office and the Court.

3. Misunderstanding and Misstating Applicable Law

The Petitioners do not have a misunderstanding of the Bankruptcy Code. To the contrary, the petitioners understand the essence of the Code. The overall actions of the Court in handling the matter has been prejudicial from its inception. Consequently, the petitioners contend that this Court must look at the totality of the actions of the Court prior to the denial of discharge and thereafter. The actions of the Bankruptcy Court to ignore the clear mandate of the law as it relates to the involuntary conversion, creditor's meeting, requirement of accounting by the trustee's office and the distribution of assets from the sale is prima facie evidence of a clear bias on the part of the Court and improper alliances. The element of coercion (Congress envisioned elements of coercion as being problematic under the Bankruptcy Code) is starkly visible in this case for which the petitioners have consistently sought relief.

This Court should not view this case from piecemeal perspective but from the whole definitive review that is necessary to obtain clarity as to the actions which have govern this case in its totality. The argument by the Court that the petitioner's behavior justifies the action of the lower Court and the Trustee's office is not grounded in fact and not supported by the law.

As it relates specifically to the issues regarding discharge; administration of the nonexistent estate after denial of discharge of involuntary individual chapter 7 and abuse of judicial power the petitioner contends that the Bankruptcy Court has consistently acted with a vendetta and viciousness that belies the statutory protections within the Bankruptcy

Code. The petitioners contend that had the Court acted according to law, the dismissal of the case with our without prejudice would have been in accordance with the Code. It is clear that the intent of the Bankruptcy Court was to literally strip both post petition and pre-petition assets of the debtor to the disregard of the best interest of the unsecured creditors. The unsecured creditor's would have faired substantially better outside of the bankruptcy arena giving the fact that the taking of the assets of the debtor and the wrongful sale and misappropriation of millions of dollars in assets has resulted in a substantial diminishing of the value of the overall estate. The hard handed actions of the Court is not justified in lieu of the return of only $60,000.00 payable mostly to administration of the case. There is no factual or legal support for the contention by the Trustee that the continual administration of the both Larry Conway and Marilyn Conway's case was consistent with the Bankruptcy Code.

The Trustee further asserts that the taking of the assets of the petitioners was totally correct, legal and in proper discharge of the obligation of the Trustee and the Bankruptcy Court under the Bankruptcy Code. It is not surprising that the Trustee fails to mention that he has failed to carry out his duty of accounting and were a full investigation into the disposition of the assets carried forth by the proper authorities that his office would be found wanting in the balance for official corruption.

Overall the Trustee's has failed to address the primary issues and has attempted to sidestep the major issues regarding the problems inherent in the Bankruptcy Code and abuse of power which contravene rights under the United States Constitution.

IV QUESTIONS AS TO JURISDICTIONAL GRANT

The respondent, Trustee fails to address the issues presented by the Petitioner in Questions 2, 3, 5 and 7 on the basis that the issues were not raised at the lower level. Further the respondent attempt to dissuade this Court from review of the substantive issues on the basis that the District Court entered Administrative Order 84-30, and 99-33. The petitioner contends that the issue of jurisdiction is of such high importance that this Court should review same wherein said actions impinge upon the Constitution to the level reflected in this particular instance. The ability of the Bankruptcy Court to transcend its boundary is of major importance given the all encompassing act of the Bankruptcy Code to effectuate commercial and consumer matters in this country.

The petitioner clearly brings to the forefront the lack of jurisdiction of the appellate Court to review decisions of the Bankruptcy Appellate Court without actual ratification by the District Court. The District Court primarily rubber stamps the decisions of both the Bankruptcy Court and the BAP without reviewing same. In such an instance there has in fact been the creation of these two entities as Courts of original jurisdiction outside of the parameters of the law.

The fact that the Bankruptcy Court can appoint a Chapter 7 Trustee without mandating that he adhere to law is substantial justification for this Court to review the methodology of the grant of power to the Bankruptcy Court and the Bankruptcy Appellate Panel. For the reason that this grant of power exceeds 11 U.S.C.S. § 157 this Court should take certiorari on this particular issue as being a violation of law.

CONCLUSION

It is the petitioner's contention that the respondent has failed to set forth any basis in law and fact that should dissuade this Court from grant the writ of certiorari on these issues. The petitioner contends that upon reviewing the plain facts, that it will become crystal clear that the Bankruptcy Court for the Western District of Tennessee has far exceeded its grasp and that the implications of said actions are far reaching and mandate a clear review for violation of statutory and constitutional law.

FOR THE FOREGOING REASONS THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

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